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AUG 30 2004

OFFICE OF PETITIONS

In re Application of :
Beeman et al. : DECISION GRANTING
Application No. 10/763,682 : PETITION
Filed: 23 January, 2004 :
Attorney Docket No. 16785-007001 :

This is a decision on the petition filed on 6 July, 2004, which is treated as a petition requesting that the above-identified application, without drawings, be accorded a filing date of 23 January, 2004.

The application was filed on 23 January, 2004, without drawings.¹ Accordingly, on 4 May, 2004, Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application" stating that no filing date had been assigned because the application was deposited without drawings, and requiring drawings be filed if necessary. A two (2) month period for reply was set. The Notice also stated that the oath or declaration was missing.

In response, on 6 July, 2004,² petitioners filed the present petition, accompanied by, *inter alia*, 10 sheets of drawings. Petitioners concede that the drawings were inadvertently omitted when the present application was filed, but state that the first 11 figures of the drawings were present in a prior-filed application incorporated by reference in the present application.

It has been PTO practice to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention

¹35 U.S.C. § 113 (first sentence) requires a drawing "where necessary for the understanding of the subject matter sought to be patented."

²4 July, 2004, fell on a Sunday, and 5 July, 2004, fell on a Federal holiday, so the response filed on 6 July, 2004, was timely filed. See 37 CFR 1.7(a).

under 35 U.S.C. 113 (first sentence).³ A review of the record reveals that Claims 20, 29, and 30 are method claims. Therefore, the present application is deemed to be an application which does not require a drawing for an understanding of the invention. Accordingly, the application, as filed, is entitled to a filing date.

The petition is granted. Since the petition was necessitated by an error on the part of the USPTO, no petition fee is due and none has been charged.

The "Notice of Incomplete Nonprovisional Application" mailed on 4 May, 2004, was sent in error and is hereby vacated.

The application will be processed and examined using only the application papers filed on 23 January, 2004. The 10 sheets of drawings filed with the present petition will not be used for processing or examination, but will be retained in the application file.

Obviously, in view of the incorporation by reference of the prior application, the 10 sheets of drawings are not new matter if they were a part of the disclosure of the prior application.

Petitioners should file the 10 sheets of drawings as a preliminary amendment. If the 10 sheets of drawings are filed as a preliminary amendment, they will be reviewed by the examiner for new matter.

The application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 23 January, 2004, using only the application papers present on filing.

Telephone inquiries specific to this matter should be directed to the undersigned at 703.308.6918.



Douglas I. Wood
Senior Petitions Attorney
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³MPEP 601.01(f).